

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

UNITED STATES OF AMERICA

VS.

CRIMINAL NO. 1:22cr58-LG-BWR

PATRICK DARNELL DANIELS

VOLUME II

TRIAL PROCEEDINGS

BEFORE THE HONORABLE LOUIS GUIROLA, JR.
UNITED STATES DISTRICT JUDGE

JULY 25, 2022
GULFPORT, MISSISSIPPI

APPEARANCES:

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(PREVIOUS VOLUME I CONTAINS SEALED JURY VOIR DIRE)

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THE COURT: Ladies and gentlemen of the jury, you are required to take an additional oath, and that is an oath to render a true and correct verdict based on the law and the evidence. If you would please rise, raise your right hand and allow the clerk of the court to administer that oath.

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(JURY SWORN)

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THE COURT: Thank you, ladies and gentlemen. Please be seated.

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I was going to tell you what we're going to do for the remainder of the morning, but the morning is gone, so I will tell you what we're going to do for the next couple of hours. First and foremost, I am going to -- when you go back to the jury room, we have got menus in there for you so you can order some lunch, and we're going to get you some lunch that you can eat right here in the courthouse before we actually begin the trial in earnest.

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From time to time during this trial, the Court will be providing you with instructions, and these are instructions on the law. And when I provide you with those instructions, you have already told me and you have told the lawyers and the litigants that you are going to follow the law, so I expect that you will follow my instructions as well.

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We will have some instructions before you leave the

1 courtroom, we call those the preliminary instructions. Those
2 are instructions that will assist you during the trial itself,
3 tell you a little bit about the trial and the processes of the
4 trial. It will also assist you in determining what your
5 conduct should be outside of the courtroom and how you should
6 comport yourself when you go home because you will not be
7 sequestered.

8 Please bear in mind that from time to time I will have to,
9 perhaps, meet with the lawyers or take care of other matters
10 that need to be taken up outside of your presence and you will
11 be asked to go back to the jury room.

12 Now, when you do recess here this morning -- this
13 afternoon for your lunch, we'll make available to you a
14 telephone because even though you knew you had to be here this
15 morning, you could not have anticipated that you would actually
16 be selected as a juror. You may need to call your employer,
17 you may need to call your home, you may need to call your
18 children, make arrangements, I do not know. But we want to
19 make arrangements for you to have the opportunity to call
20 someone and let them know where you will be.

21 In addition to that, I get asked this question all the
22 time: Do I have to sit in the same seat? No. Sit anywhere
23 you would like to within the jury box where you feel
24 comfortable, and that I will leave entirely up to you.

25 When you do go back to the jury room, there will be

1 refreshments available for you, soft drinks, coffee, water,
2 those types of things. And, gee, what else? What other
3 housekeeping matters do I need to go over with you? We'll also
4 have -- Stan reminds me -- you don't have to take notes. But
5 if you would like to take notes, there will be writing
6 implements back there for you, pads, pens, pencils, whatever
7 you need for taking notes if you wish to do so.

8 Other than that, we'll play it by ear and take it as we
9 come along. Sometimes I get asked, can I bring a Coke back
10 into the courtroom with me? No, you can't do that. Because if
11 you drop it, it becomes a mess. But if you want to bring a
12 bottle of water back in the courtroom with you, you are
13 perfectly free to do that. I think there are bottles, aren't
14 there, Vicki? There are bottled waters. If you want to bring
15 a bottled water back in here, go for it.

16 When you do leave the courthouse today, Stan will be your
17 liaison with the Court. If you have got a question for me,
18 give it to him and he will bring it to me. You're also going
19 to be provided with a pass so that you can park tomorrow in the
20 compound. That means that you go through the secure gate and
21 you're able to park within what we call the compound. The
22 chances of you running into any of the lawyers or any of the
23 witnesses or anybody at all that has anything to do with this
24 case are zero, because once you are in the compound, the Court
25 Security Officer will tell you where to assemble so he can

1 bring you up the elevators. That eliminates a lot of stress
2 and problems. All right, then. We'll go through these
3 preliminary instructions. Again, when you get back into the
4 jury room, if you need to make a phone call you may. By all
5 means, order your lunches and we'll have those delivered to
6 you.

7 **PRELIMINARY INSTRUCTIONS TO THE JURY**

8 Members of the jury, now that you have been sworn I will
9 give you some preliminary instructions to guide you in your
10 participation in the trial. It will be your duty to find from
11 the evidence what the facts are. You and you alone will be the
12 judges of the facts.

13 You will then have to apply to those facts the law as the
14 Court will give it to you. You must follow that law whether
15 you agree with it or not. Perform these duties fairly. Do not
16 let bias, sympathy or prejudice that you may feel toward one
17 side or the other influence your decisions in any way. In
18 particular, do not let racial, ethnic, national origin or other
19 bias influence your decisions in any way. Nothing the Court
20 may say or do during the course of trial is intended to
21 indicate or should be taken by you as indicating what your
22 verdict should be.

23 The evidence from which you will find the facts will
24 consist of testimony of witnesses, documents, and other items
25 received into the records as exhibits and any facts that the

1 lawyers may agree upon or stipulate to that the Court may
2 instruct you to find.

3 Certain things, however, are not evidence and must not be
4 considered by you, and I will list some of them for you now:

5 Number 1, statements, arguments, and questions by lawyers
6 are not evidence.

7 Number 2, objections to questions are not evidence.
8 Lawyers have an obligation to their clients to make objections
9 when they believe evidence is being offered which is improper
10 under the rules of evidence. You should not be influenced by
11 the objection or by the Court's ruling on it. If the objection
12 is sustained, ignore the question. If it is overruled, treat
13 the answer like any other. If you are instructed that some
14 item of evidence is received for a limited purpose only, then
15 you must follow that instructions.

16 Number 3, testimony that the Court has excluded or told
17 you to disregard is not evidence presented here in the
18 courtroom and should not be considered.

19 Number 4, anything that you may have seen, heard, or read
20 outside of the courtroom is not evidence and must be
21 disregarded. You are to decide the case solely on the evidence
22 presented here and in the courtroom.

23 There are two kinds of evidence, direct and
24 circumstantial. Direct evidence is direct proof of a fact,
25 such as the testimony of an eyewitness. Circumstantial

1 evidence is the proof of facts from which you may infer or
2 conclude that other facts exists. I will give you further
3 instructions on these, as well as other matters, at the end of
4 the case, but keep in mind that you may consider both kinds of
5 evidence.

6 It will be up to you to decide which witnesses to believe,
7 which witnesses not to believe, and how much of any witness'
8 testimony to accept or reject. I will give you some guidelines
9 for determining the credibility of witnesses at the end of the
10 case.

11 As you know, this is a criminal case. And there are three
12 basic rules about a criminal case that you must always keep in
13 mind. First, the defendant is presumed innocent until proven
14 guilty. The indictment brought by the government against the
15 defendant is only an accusation, nothing more. It is not proof
16 of guilt or anything else. The defendant therefore starts out
17 with a clean slate.

18 Second, the burden of proof is on the government until the
19 very end of the case. The defendant has no burden to prove his
20 innocence or to present any evidence or to testify. Since the
21 defendant has the right to remain silent, the law prohibits you
22 from arriving at your verdict by considering that the defendant
23 may not have testified.

24 And third, the government must prove the defendant's guilt
25 beyond a reasonable doubt. I will give you further

1 instructions on this point later, but bear in mind that in this
2 respect, a criminal case is different from a civil case. I
3 will give you detailed instructions on the law at the end of
4 the case and those instructions will control your deliberations
5 and your decisions. But in order to help you follow the
6 evidence, I will now give you a brief summary of the elements
7 of the offense that the government must prove beyond a
8 reasonable doubt to make its case.

9 Now, in this case the defendant is charged with knowingly
10 possessing a firearm which was in and affecting interstate or
11 foreign commerce while knowingly being an unlawful user of a
12 controlled substance.

13 For you to find the defendant guilty of this crime, you
14 must be convinced that the government has proved each of the
15 following beyond a reasonable doubt:

16 First, that the defendant knowingly possessed a firearm as
17 charged; second, that at the time the defendant possessed the
18 firearm, the defendant was an unlawful user of any controlled
19 substance; third, that the defendant knew he was an unlawful
20 user of an illegal controlled substance; and fourth, that the
21 firearm possessed traveled in interstate or foreign commerce.
22 That is before the defendant possessed the firearm, it had
23 traveled at some time from one state to another or between any
24 part of the United States and any other country.

25 Now, the term "firearm" means any weapon that will be or

1 is designed or may readily be converted to expel a projectile
2 by the action of an explosion. The term "firearm" also
3 includes the frame or receiver of any such weapon or any
4 firearm muffler or firearm silencer or destructive device.

5 Marijuana is a controlled substance within the meaning of
6 the law. The phrase "unlawful user of a controlled substance"
7 means a person who uses a controlled substance in a manner
8 other than as prescribed by a licensed physician. The
9 defendant must have been actively engaged in the use of a
10 controlled substance at the precise time he possessed the
11 firearm. Such use is not limited to the use of drugs on a
12 particular day or within a matter of days or weeks before, but
13 rather that the unlawful use has occurred recently enough to
14 indicate that the individual is actively engaged in such
15 conduct. An inference that a person was a user of a controlled
16 substance may be drawn from the evidence of a pattern of use or
17 possession of a controlled substance that reasonably covers the
18 time the firearm was possessed.

19 "Possession," as that term is used in these instructions
20 may be of two kinds: It may be actual possession or
21 constructive possession. A person who knowingly has direct
22 physical control over a thing at a given time is in actual
23 possession of it. A person who, although not in actual
24 possession, knowingly has both the power and the intention at a
25 given time to exercise dominion or control over a thing, either

1 directly or through another person or persons, is in
2 constructive possession of it.

3 Possession may be joint or it may be sole. If one person
4 alone has actual or constructive possession of a thing,
5 possession is sole. If two or more persons share actual or
6 constructive possession of a thing, then possession is joint.
7 You may find the element of possession is present if you find
8 beyond a reasonable doubt that the defendant had actual or
9 constructive possession, either alone or jointly with others.

10 The word "knowingly," as that term has been used from time
11 to time in these instructions, means that the act was
12 voluntarily and intentionally, not because of mistake or
13 accident.

14 Ladies and gentlemen, a few words about your conduct as
15 jurors. If you would like to take notes during the trial, you
16 may do so. On the other hand, you are not required to take
17 notes if you prefer not to do so. Each of you should make your
18 own decision about this. If you do decide to take notes, be
19 careful not to get so involved in the note-taking that you
20 become distracted from the ongoing proceedings. Your notes
21 should be used only as memory aids. You should not give your
22 notes precedence over your independent recollection of the
23 evidence. If you do not take notes, you should rely upon your
24 own independent recollection of the proceedings. And you
25 should not be unduly influenced by the notes of other jurors.

1 Notes are not entitled to any greater weight than the memory or
2 impression of each juror as to what the testimony may have
3 been. Whether you take notes or not, each of you must form and
4 express your own opinion as to the facts of the case.

5 Now, you will note that we have an official court reporter
6 making a record of the trial. However, we will not have
7 typewritten transcripts of this record available for your use
8 in reaching a decision.

9 During the course of the trial, do not speak with any
10 witness or with the defendant or with any of the lawyers in the
11 case. Please do not talk with them about any subject at all.
12 You may be unaware of the identity of everyone connected with
13 this case; therefore, in order to avoid even the appearance of
14 impropriety, do not engage in any conversation with anyone in
15 or about the courtroom or courthouse. It is best that you
16 remain in the jury room during breaks in the trial, and do not
17 linger in the hall.

18 In addition, during the course of the trial do not talk
19 about the trial with anyone else, not your family, not your
20 friends, not the people with whom you work. Also, do not
21 discuss this case among yourselves until I have instructed you
22 on the law and you have gone into the jury room to make your
23 decision at the end of the trial. Otherwise, without realizing
24 it, you may start forming opinions before the trial is over.
25 It is important that you wait until all the evidence is

1 received and you have heard my instructions on the rules of law
2 before you deliberate among yourselves.

3 You, as jurors, must decide this case based solely on the
4 evidence presented here within the four walls of this
5 courtroom. This means that during the trial you must not
6 conduct any independent research about the case, the matters in
7 the case, or the individuals or corporations involved in the
8 case. In other words, you should not consult dictionaries or
9 reference materials, search the internet, websites or blogs, or
10 use any other electronic tools to obtain information about this
11 case or to help you decide the case. Please do not try to find
12 out any information from any source outside the confines of the
13 courtroom.

14 I know that many of you use cell phones, the Internet and
15 other tools of technology. You also must not talk to anyone at
16 any time about this case or use these tools to communicate
17 electronically with anyone about the case; this includes your
18 family, and your friends. You may not communicate with anyone
19 about the case through any means, including your cell phone,
20 through an email, a BlackBerry, iPhone, text messaging,
21 SnapChat, Twitter or through any blog or website including
22 Facebook, Google, WhatsApp, or YouTube. You may not use any
23 similar technology of social media even if I have not
24 specifically mentioned it here.

25 I expect you will inform me as soon as you become aware of

1 any other juror's violation of these instructions. A juror who
2 violates these restrictions jeopardizes the fairness of these
3 proceedings and a mistrial could result which would require the
4 entire trial process to start over.

5 I will now give you a little roadmap to help you follow
6 what will happen over the entire course of the trial. First,
7 the government will make an opening statement, which is simply
8 an outline to help you understand the evidence as it is
9 admitted. Next, the defendant's attorney may, but does not
10 have to make an opening statement. Opening statements are
11 neither evidence nor arguments. The government will then
12 present its witnesses, and counsel for the defendant may
13 cross-examine them. Following the government's case, the
14 defendant may, if he wishes, present witnesses whom the
15 government may cross-examine. If the defendant decides to
16 present evidence, the government may introduce rebuttal
17 evidence.

18 After all of the evidence is in, the attorneys will
19 present their closing arguments to summarize and interpret the
20 evidence for you, and the Court will instruct you on the law,
21 the law that you must apply in reaching your verdict.

22 Now, ladies and gentlemen, I am going to go ahead now and
23 excuse you so that you can go back to the jury room as we
24 discussed, make a phone call if you need to, and by all means,
25 on your menus, order your late lunch, which will be delivered

1 to you in the jury room. After you have had your lunch, we'll
2 reconvene, and we'll begin the trial in earnest. Anything else
3 on behalf of the government at this time?

4 **MS. ROSE:** No.

5 **THE COURT:** Anything also on behalf of the defendant?

6 **MR. WEBER:** No, Your Honor.

7 **THE COURT:** Very well, then. Ladies and gentlemen,
8 you may be excused.

9 (JURY OUT AT 12:56 P.M.)

10 **THE COURT:** Thank you. Please be seated.

11 I think it would only be fair to excuse you all as well so
12 that you can have a fair opportunity to go get something to
13 eat. And I want to say come back at 2:00. At 2:00, I will
14 take up the defendant's pending motion to dismiss the
15 indictment. I will hear short, brief oral argument on the
16 issue. I will hear briefly from the government as well, and
17 then I will give you my ruling before we proceed. I can't
18 really think of anything else that I need to go over, but does
19 the government have anything else we need to go over before we
20 proceed?

21 **MR. BUCKNER:** Your Honor, the government had filed a
22 motion in limine concerning the jury instructions. The Court
23 already gave the preliminary instruction. I understand we'll
24 have a jury charge conference later on. So I think that the
25 Court could address that at that time, it's not necessary.

1 **THE COURT:** That motion is premature. I will take up
2 the jury instructions at the close of the case, assuming we get
3 that far.

4 **MR. BUCKNER:** Yes, Your Honor.

5 **THE COURT:** Anything else?

6 **MR. BUCKNER:** Nothing, else Your Honor.

7 **THE COURT:** Will you be ready with your first witness
8 right after opening?

9 **MS. ROSE:** Yes, Your Honor.

10 **THE COURT:** Does either side wish to invoke the Rule
11 of Sequestration?

12 **MR. BUCKNER:** The government does, Your Honor.

13 **THE COURT:** All right. The Rule of Sequestration is
14 therefore invoked, that means that anyone who will testify in
15 the case must, of course, be excused. That, obviously, does
16 not apply to the defendant and it does not apply to the
17 representative of the government here at counsel table.
18 Please, if there's someone that you anticipate that will
19 testify, help me enforce the rule because I don't know who is
20 who here, all right? Anything else on of behalf of the
21 government?

22 **MS. ROSE:** No, Your Honor.

23 **THE COURT:** Mr. Weber, anything else that you think
24 we need to take up at this time on behalf of Mr. Daniels?

25 **MR. WEBER:** Your Honor, no. But I think the

1 government has a number of pictures I believe they intend to
2 introduce, it's on their exhibit list. And I think we can get
3 together and perhaps preadmit those pictures.

4 **THE COURT:** I think it would be, perhaps, a timesaver
5 if when we return, and after I have ruled on the defendant's
6 motion, if we can go ahead and admit all exhibits to which
7 there is no objection, both by the government and, if there are
8 any, by defendant. So I'd ask that during this recess that you
9 go over those in the event that there are some available that
10 we can just go ahead and admit without objection and provide to
11 the clerk.

12 One other thing. I know that there are firearms involved
13 that you will be bringing into the courtroom. Let us -- I want
14 to be sure that they're safe, that is my greatest concern. And
15 they will remain, even though they are admitted into evidence,
16 they will remain in the custody of the prosecution during the
17 trial, and even after the trial is concluded would leave to
18 substitute photographs. Anything else?

19 **MS. ROSE:** No. Thank you, Your Honor.

20 **THE COURT:** Mr. Weber, anything else that you can
21 think of?

22 **MR. WEBER:** No, Your Honor.

23 **THE COURT:** Great. Well, enjoy our late lunch and
24 we'll be back at 2:00.

25 **(RECESS TAKEN AT 1:00 P.M. UNTIL 2:17 P.M.)**

1 **THE COURT:** Is the government ready to proceed?

2 **MS. ROSE:** Yes, Your Honor.

3 **THE COURT:** Is the defendant ready to proceed?

4 **MR. WEBER:** Yes, Your Honor.

5 **THE COURT:** Let's take up the easy stuff first. I am
6 given to understand that you have all agreed on the
7 admissibility of all of the government's exhibits; is that
8 correct?

9 **MR. WEBER:** Yes, Your Honor.

10 **THE COURT:** Let's go over them, then. Who is in
11 charge of that? Ms. Rose. And we'll go over the government's
12 exhibit list. You can go down them. I have got a list, but I
13 want to be sure I understand what they are, and you just tell
14 me what they are.

15 **MS. ROSE:** Yes, Your Honor.

16 **THE COURT:** Having some computer issues here, hold on
17 just a second. There we go. I have got on my list a G-1
18 through G-29; is that still accurate?

19 **MS. ROSE:** Yes.

20 **THE COURT:** Let's go through them one at a time.

21 **MS. ROSE:** Yes, sir. G-1 is a photo of the firearms
22 located inside the vehicle. G-2 is a photo of marijuana blunts
23 located inside the vehicle. G-3 is a photo of the missing tag
24 on the defendant's vehicle. G-4 is a photo of the defendant's
25 vehicle from the driver's side. G-5 is a photo of the driver

1 and front passenger compartments. G-6 is a photo of the
2 driver's side view from the front. G-7 is a photo of the VIN
3 for defendant's vehicle. G-8 is a photo of the defendant's
4 vehicle on the passenger side. G-9 is a photo of the front
5 passenger side compartment. G-10 is a photo of the rear
6 passenger side compartment. G-11 is a photo of the toolbox.
7 G-12 is a photo of the serial number of the assault rifle.
8 G-13 is a photo of the side-view of the assault rifle. G-14 is
9 a photo of the overall view of the assault rifle. G-15 is a
10 photo of the assault rifle manufacturer. G-16 is a photo of
11 the assault rifle model. G-17 is a photo of the assault rifle
12 from the other side view. G-18 is a photo of the handgun as a
13 side-view. G-19 is another photo of the handgun. G-20 is a
14 photo of the handgun's serial number. G-21 is a photo of the
15 handgun's manufacturer. G-22 is another photo of the handgun
16 serial number. G-23 is a photo of the defendant's driver's
17 license. G-24 is the defendant's recorded interview. G-24A is
18 the transcript of the defendant's recorded interview. G-25 is
19 the American Tactical Rifle. G-25A is the magazine that
20 accompanies that rifle. G-25B is the ammunition that goes with
21 that rifle. G-26 is the Springfield Armory Hellcat
22 9-millimeter firearm. G-26A is the ammunition that goes to
23 that firearm. G-26B is the magazine that goes to that firearm.
24 G-27 is the ATF firearm nexus report. G-28 is the smoked
25 marijuana cigarettes, or blunts. And G-29 is the DEA lab

1 report.

2 Ms. Tynes, Mr. Weber, on behalf of the defendant, it's my
3 understanding that you have no objection to the admission of
4 these exhibits; is that correct?

5 **MR. WEBER:** That is correct, Your Honor.

6 **THE COURT:** Very well. Without objection,
7 Government's Exhibits number 1 through 29, inclusive of some
8 lettered exhibits as well, 1 through 29 will be marked and
9 admitted into evidence, again, without objection.

10 You can, of course, use those exhibits as you wish during
11 the presentation of the evidence.

12 (EXHIBITS G-1 THROUGH G-29 ADMITTED)

13 **MS. ROSE:** Thank you, Your Honor.

14 **THE COURT:** The next matter before the Court is the
15 defendant's second motion to dismiss the indictment. Mr.
16 Weber, will you be arguing that on behalf of the defendant?

17 **MR. WEBER:** Yes, Your Honor.

18 **THE COURT:** You may proceed.

19 **MR. WEBER:** Your Honor, we've filed a second motion
20 to dismiss the indictment arguing that 18, United States Code,
21 Section 922(g)(3) is unconstitutionally vague and in violation
22 of Mr. Daniels' due process rights.

23 **THE COURT:** Why don't you just argue that from
24 counsel table. We have got the lecturn turned and that might
25 be clunky.

1 **MR. WEBER:** If the Court doesn't mind, I can --

2 **THE COURT:** Go right ahead.

3 **MR. WEBER:** In our briefing, in our motion in our
4 briefing we pointed out to the Court that we believe 922(g)(3)
5 is facially vague. We understand or acknowledge the current
6 law in the Fifth Circuit, a case of *Patterson*, which requires
7 that the defendant, in this particular case, first show that as
8 applied to his particular case, to his particular facts, as
9 applied that law is vague. And that's -- I am not arguing that
10 that is the case here. What I am suggesting is that under
11 *Johnson versus United States*, which is a case that analyzed the
12 Armed Career Criminal Act, Justice Scalia authored that opinion
13 and seemed to suggest that there is no need to, first, show an
14 as-applied violation of the defendant's due process rights, and
15 that the Court can address a facially vague challenge to the
16 statute.

17 And I am relying specifically on -- this is not John Weber
18 making this argument, this was a case that we found in the
19 District Court of Utah where a district court judge over there
20 found that 922(g)(3) was both facially and, as applied, vague
21 to that particular defendant.

22 I did not cite this in my brief, but there's a Fifth
23 Circuit case, *United States versus Herrera*, H-E-R-R-E-R-A, it's
24 a 2002 case. The citation is 313 F.3d 882. And there's a
25 strong dissent from Judge DeMoss joined by Judge Jerry Smith.

1 And that case, the *en banc* Fifth Circuit did not go into -- did
2 not even address the vagueness or as-applied constitutional
3 challenge to 922(g)(3); however, in the dissent, Judge DeMoss
4 talks about some of the similar issues or concerns that we
5 raise to the Court today, that is there is no statutory
6 definition of unlawful user. Congress did not define this
7 particular term, and therefore what is the Court going to rely
8 on to define what is an unlawful user.

9 I don't know if the Court is in a position to even address
10 that particular facially vague argument because of the status
11 of the Fifth Circuit law, but if the Court were to address the
12 facial challenge to the statute, the Court would find that
13 Congress has not defined that term "unlawful user," and that's
14 essentially why we're here today is to try to figure out what
15 that term means. And I know the Court has given a preliminary
16 instruction to the jury, but in fashioning jury instructions or
17 proposed jury instructions to the Court, that was something
18 that we wrestled with as to how to properly instruct a jury as
19 to what that term means, and that, of course, in essence, is
20 our argument as to why this statute, why 922(g)(3) is vague.

21 **THE COURT:** All right. Thank you, Mr. Weber. What
22 says the government?

23 **MR. BUCKNER:** Your Honor, I think as defense counsel
24 has at least implied, the Fifth Circuit's precedent establishes
25 that you have to show an as-applied challenge before you can

1 bring a facially vague challenge to a statute. And in this
2 case, there is no dispute that an ordinary person would
3 understand that smoking marijuana 14 times a month for several
4 years would qualify one's self as an unlawful user of a
5 controlled substance. So because the Fifth Circuit has made it
6 clear in both *Patterson* and *May*, both of which were cited in
7 the government's response, that you have to be able to show an
8 as-applied violation before you reach that facial argument, the
9 motion to dismiss should be denied. Thank you, Your Honor.

10 **THE COURT:** Thank you, Mr. Buckner. Do you wish to
11 respond, Mr. Weber?

12 **MR. WEBER:** No, Your Honor.

13 **THE COURT:** I think you will concede, Mr. Weber, that
14 the Court must follow the *Johnson* line of cases in determining
15 whether or not Mr. Daniels can bring a facial as-applied
16 challenge to the statute. I think that's what you said.

17 **MR. WEBER:** I said, Your Honor, that the law in the
18 Fifth Circuit under *Patterson* requires that Mr. Daniels find
19 that the law, as applied to the facts and circumstances of his
20 case, is vague; in other words, the conduct at issue in this
21 particular case is at the core concern or reason, or seems to
22 be the reason why Congress passed this law or implemented this
23 particular law.

24 **THE COURT:** All right. I am not in agreement with
25 the District Court decision in the district in Utah, and I am

1 not in a position to adopt that District Court's analysis on
2 the challenge to the statute there. I am constrained, instead,
3 by a couple of cases within the Fifth Circuit, and I am also
4 persuaded by a case out of the Eighth Circuit Court of Appeals.
5 And I start with your contention that *Johnson* somehow has
6 changed this landscape with facial challenges to the
7 constitutionality of a statute. There's a follow-up case to
8 the *Johnson* case, which was decided in 2015, it's called *United*
9 *States versus Westbrook*s, that's at 858 F.3d 317, where the
10 Fifth Circuit basically, and I quote, said that "*Johnson* did
11 not change the rule that defendant whose conduct is clearly
12 prohibited cannot be the one making that challenge." I am also
13 persuaded once again by a case out of the Eighth Circuit, it's
14 a 2016 case, *United States versus Bramer*, B-R-A-M-E-R, that's
15 at 832 F.3d 908.

16 Now, in *Bramer* the Eighth Circuit held that under the
17 *Johnson* factors, that *Bramer* need not prove that 922(g)(3) is
18 vague in all its applications to succeed on a facial challenge,
19 but the law did still require him to show that the statute is
20 vague as applied to his particular conduct before bringing that
21 facial challenge. Because *Bramer* admitted in his written plea
22 agreement to being an unlawful user of marijuana while in
23 knowing possession of at least three firearms, there was no
24 basis in the record to conclude that the term "unlawful user of
25 a controlled substance" was unconstitutionally vague as applied

1 to him.

2 Therefore, I am going to deny your motion at this time.
3 And let me point out that what's concerning the Court here is I
4 don't have the facts before me to determine what the facts are
5 as they relate to Mr. Daniels. So even though your motion is
6 denied, you will, of course, have other opportunities within
7 which to make, perhaps, a motion for judgment of acquittal at
8 the conclusion of the government's case, at which time we'll
9 have at least before us those facts from which the Court can
10 conclude whether a facial challenge has been made. And that's
11 the ruling of the Court.

12 **MR. WEBER:** Yes, Your Honor. Thank you.

13 **THE COURT:** You're not prejudiced in any regards in
14 your ability to bring a similar challenge after the government
15 concludes its case.

16 I am given to understand that the lunches are late. They
17 are here. That still makes them late. And I want to give the
18 jury a full opportunity within which to eat and relax and take
19 it easy. So everyone needs to stay close. We're going to be
20 on the jury's clock. When they're ready -- I am getting a 3
21 signal from the court security officer, that's about half an
22 hour from now, more or less. That may be the clock which we
23 use.

24 Is there anything else that we need to take up on behalf
25 of the government before we, again, take a recess to await the

1 jury's, we'll call it a feeding, the jury's noon recess?

2 **MS. ROSE:** No. Thank you, Your Honor.

3 **THE COURT:** Who is going to make opening statement on
4 behalf of the government?

5 **MR. BUCKNER:** I will, Your Honor.

6 **THE COURT:** And who will make opening statement on
7 behalf of the defendant?

8 **MR. WEBER:** I will, Your Honor.

9 **THE COURT:** I presume you are going to take that
10 right after the government?

11 **MR. WEBER:** Yes, Your Honor.

12 **THE COURT:** And who will be your first witness after
13 opening statement?

14 **MS. ROSE:** It will be Task Force Officer Bell.

15 **THE COURT:** Is there anything else that we need to
16 take up on behalf of the defendant before we take up another
17 short recess?

18 **MR. WEBER:** No, Your Honor.

19 **THE COURT:** Then we'll be in recess awaiting the
20 jury's pleasure. We're in recess.

21 **(RECESS TAKEN AT 2:32 P.M. UNTIL 3:03 P.M.)**

22 **THE COURT:** Is the government ready to proceed?

23 **MS. ROSE:** Yes, Your Honor.

24 **THE COURT:** Defendant ready to proceed?

25 **MR. WEBER:** Yes, Your Honor.

1 **THE COURT:** Very good. Please bring in the jury.

2 **(JURY IN AT 3:04 P.M.)**

3 **THE COURT:** Good afternoon, ladies and gentlemen. I
4 hope that you had -- that you were able to enjoy your lunch.
5 The parties have indicated to the Court that they are ready to
6 proceed. You may make your opening statement on behalf of the
7 government.

8 **MR. BUCKNER:** May I take the lecturn, Your Honor?

9 **THE COURT:** Of course.

10 **OPENING STATEMENT BY THE GOVERNMENT**

11 **MR. BUCKNER:** May it please the Court, counsel
12 opposite, ladies and gentlemen of the jury. The evidence and
13 testimony that you see and hear in this case will show that on
14 or about April 25 of 2022, the defendant, Patrick Darnell
15 Daniels, Jr., was an unlawful user of a controlled substance in
16 possession of a firearm.

17 Now, you may be wondering how will the evidence and
18 testimony show that. Well, the evidence will show that on
19 April 25 of 2022, law enforcement officers in Hancock County,
20 Mississippi, pulled over an F-150 pickup truck for operating
21 without a license plate. Mr. Daniels was the only person
22 inside the truck. When officers approached, they smelled the
23 odor of smoked marijuana coming from the vehicle. They
24 searched the car. And during the course of searching the
25 vehicle, they located two firearms. One was a Springfield

1 Armory 9-millimeter pistol, it was loaded. You will get to see
2 it today. One was an American Tactical assault-style rifle.
3 It was also loaded. It had a 30-round magazine. You will get
4 to see that one today, too. Officers also located what they
5 believe to be marijuana blunts or cigarettes smoked in the
6 ashtray of the vehicle.

7 After the traffic stop, Mr. Daniels spoke with police and
8 he admitted that he had smoked marijuana approximately 14 days
9 a month since he graduated from high school.

10 He also admitted that he possessed both of the guns that
11 were found in the vehicle. He admitted it, he said, yeah, I
12 possess both of those firearms. Now, the investigation didn't
13 conclude with Mr. Daniels' confession. You will also hear
14 testimony about how the two guns were examined and researched
15 by a special agent with the Bureau of Alcohol, Tobacco,
16 Firearms & Explosives. His name is Shane Lynes. He is going
17 to explain to you how he examined those weapons, conducted the
18 research to determine where they were manufactured. Because
19 remember at the beginning of the case, Judge Guirola gave you
20 some instructions about how the guns needed to move across
21 state lines or from another country into this country. So
22 Agent Lynes is going to tell you where those guns were made.
23 They weren't made in Mississippi. One of them was made in
24 Indiana and one of them was made in Croatia. So in order to be
25 in Mr. Daniels' truck in Hancock County, they had to move

1 across the state lines and/or from one country into the United
2 States.

3 So you're going to hear that testimony, too. Now, you
4 will recall I told you that officers smelled the odor of smoked
5 marijuana, and when they stopped Mr. Daniels they also found
6 some marijuana blunts, cigarettes. You're also going to hear
7 some testimony from the DEA chemist, a chemist with the Drug
8 Enforcement Administration laboratory, and she's going to
9 explain how she tested those smoked blunts and it came back
10 marijuana, which was consistent with Mr. Daniels own admission
11 that he smoked marijuana.

12 Finally, at the conclusion of this trial, based upon all
13 the evidence and testimony that you have heard, seen and heard,
14 the government is going to ask that you find that on or about
15 April 25 of 2022, the defendant, Patrick Darnell Daniels, Jr.,
16 was an unlawful user of a controlled substance in possession of
17 a firearm. And the government is going to ask that you return
18 a verdict of guilty. Thank you.

19 **THE COURT:** Thank you, Mr. Buckner. Mr. Weber, you
20 may make an opening statement on behalf of Mr. Daniels.

21 **OPENING STATEMENT BY THE DEFENDANT**

22 **MR. WEBER:** Something is missing. Something is
23 missing. That's what you're going to say at the end of the
24 government's case. This case is about marijuana. This case
25 involves guns. This case involves a legal definition of user

1 that the judge is going to give you an instruction as to the
2 definition of that. And as you heard the judge say, your job
3 is to listen and determine the facts and apply the law and come
4 up with a verdict, a decision.

5 Did the government prove their case, each and every
6 element of the offense, beyond a reasonable doubt. That's your
7 job, ladies and gentlemen. And in this case, when they finish
8 providing you the evidence and the testimony, you're going to
9 scratch your head and you're going to have a lot of questions
10 because something is missing. What's missing is proof beyond a
11 reasonable doubt that Patrick Daniels is an unlawful user of
12 marijuana in possession of a firearm.

13 You're going to have no proof beyond a reasonable doubt
14 that he meets that definition that the government has provided
15 you evidence that you can make that conclusion. And when you
16 uphold your oath to hold them to their burden, there's only one
17 conclusion, and that is that Patrick Daniels is not guilty of a
18 violation of 922(g)(3), being an unlawful user in possession of
19 firearms.

20 Thank you for your attention. Thank you for the time that
21 you have taken to participate in our system of justice. As the
22 judge said, it's the best in the world, it's not perfect. But
23 I am excited that you get to be here and participate and be a
24 part of this great judicial system that we're all proud to be a
25 part of. Thank you.

1 **THE COURT:** Thank you, Mr. Weber.

2 You may call your first witness.

3 **MS. ROSE:** Thank you, Your Honor. The government
4 calls Task Force Officer Ray Bell.

5 (Oath Administered)

6 **THE COURT:** You may proceed.

7 **RAY BELL,**
8 **having first been duly sworn, testified as follows:**

9 **DIRECT EXAMINATION**

10 **BY MS. ROSE:**

11 Q. Good afternoon.

12 A. Good afternoon.

13 Q. Could you please state your name and spell your last name
14 for the record?

15 A. First name is Ray William Bell, B-E-L-L, Jr.

16 Q. What do you do for a living, Mr. Bell?

17 A. I am a task force officer for DEA by way of Hancock County
18 Sheriff's Office.

19 Q. What does that mean?

20 A. Well, I work full time for Hancock County Sheriff's
21 Office, and I am tasked out to the DEA to work federal cases.

22 Q. How long have you been doing that?

23 A. Since January 3 of 2017.

24 Q. And that whole time with Hancock County?

25 A. No, ma'am. I was with Long Beach at one point.

1 Q. Long Beach here --

2 A. Long Beach Police Department.

3 Q. And what about before that?

4 A. I did 20 years with Long Beach.

5 Q. Okay. So how long have you been a law enforcement officer
6 overall?

7 A. Since August 1st of 2002.

8 Q. Okay. And were you working as a task force officer
9 assigned to the DEA on April 25 of this year?

10 A. Yes, ma'am.

11 Q. And on that date, did you encounter someone by the name of
12 Patrick Darnell Daniels, Jr.?

13 A. I did, yes, ma'am.

14 Q. Could you tell us about that encounter?

15 A. Yes, ma'am. Myself and another agent were on patrol
16 duties over in Hancock County. And noticed Mr. Daniels'
17 vehicle operating on the roadway without a licensed tag. We
18 conducted a traffic stop, at which point noticed the odor of
19 marijuana coming from within the vehicle. Probable cause
20 search of the vehicle yielded the firearms and taking Mr.
21 Daniels into custody.

22 Q. Where were the firearms located in the vehicle?

23 A. The first firearm, which is the handgun, it was located
24 between the driver's seat and the center console. The rifle
25 was behind -- it was in the backseat compartment of the truck.

1 Q. What do you mean by "compartment"?

2 A. Like the truck was four doors, so the front two doors
3 would be where Mr. Daniels was sitting, and the back two doors
4 is where the rifle was.

5 Q. Located where?

6 A. Like right behind -- if this is the center console of the
7 truck (indicating), the rifle was laying this way like on the
8 items that was on the backseat compartment area of the truck.

9 Q. Within reach of the driver?

10 A. Yes.

11 Q. And what else was found in the vehicle?

12 A. We found marijuana blunts that were in the ashtray.

13 Q. Tell us more about that.

14 A. It was multiple. Whenever we spoke further with Mr.
15 Daniels about it. He used the word "corral." He indicated
16 that he was living out of his vehicle and he was trying to get
17 everything together and indicated that he just kind of took
18 some things out of the ashtray and left those in the ashtray
19 and vacuumed his passenger seat area.

20 Q. And this was a statement that he made --

21 A. Post-*Miranda*.

22 Q. Okay. How many statements did he make to you?

23 A. He made one statement on scene, which was post-*Miranda*.
24 Then he made another statement, which was audio recorded
25 post-*Miranda* at DEA.

1 Q. And you're using the term "post-*Miranda*." Can you just
2 elaborate what that means for the jurors, please?

3 A. Yes, it's when I advise a defendant of their rights and
4 then I speak to them after that.

5 Q. And what statements did he make at that actual stop?

6 A. He advised me that he was living out of his vehicle. He
7 advised me that he was on hard times, and he advised me that
8 the firearms were his. One of the firearms belonged to a
9 friend of his that is no longer living, and another -- the
10 other firearm, which is the handgun, that firearm was given to
11 him as a Father's Day gift from his girlfriend.

12 Q. And did he make any admissions with respect to the use of
13 marijuana?

14 A. Yes, he did. When asked how current or how often he
15 smokes marijuana, he indicated 14 days out of the month.

16 Q. Did he tell you how long he's been smoking marijuana?

17 A. Yes, ma'am. In the statement at DEA, he indicated since
18 high school, when he graduated high school.

19 Q. Okay. After you recovered the firearms and the marijuana
20 blunts, then what did you do?

21 A. I took photos of the evidence and the vehicle, and we took
22 custody of Mr. Daniels.

23 **MS. ROSE:** Your Honor, may I approach the evidence?

24 **THE COURT:** Of course.

25 **MS. ROSE:** And may I approach the witness?

1 **BY MS. ROSE:**

2 Q. Officer Bell, I just handed you what's been marked as
3 Government's Exhibits 1 through 23. Would you mind just taking
4 a look through those?

5 A. Yes, ma'am.

6 Q. Are those the photos that you just referenced?

7 A. They are, yes, ma'am.

8 Q. Are those all the photos that you took that day?

9 A. Yes, ma'am.

10 Q. And are they fair and accurate representations of the
11 scene as you saw it?

12 A. Yes, ma'am.

13 **MS. ROSE:** Your Honor, may I have permission to
14 publish those photos?

15 **THE COURT:** You may.

16 **BY MS. ROSE:**

17 Q. Are you able to see that?

18 A. I am, yes, ma'am.

19 Q. I am showing you what's been marked as Government's
20 Exhibit G-1. What are we looking at here?

21 A. This is the driver's seat of Mr. Daniels' vehicle. You
22 will notice the rifle that is propped up. I moved that rifle
23 in that position. In fact, everything that is in this photo
24 here that's depicted, I put there. The marijuana blunts are
25 currently bagged down here on the floor, on the floorboard.

1 And I just kind of took everything to put there to corral for
2 an overall photo.

3 Q. Okay. I'm going to show you now what's been marked as
4 G-2. What are we looking at here?

5 A. Those are the marijuana blunts with ammunition under it.
6 But in the bag right there is the marijuana blunts that were
7 located in the ashtray of Mr. Daniels' vehicle.

8 Q. And I am showing you G-3.

9 A. That is a photo of the rear end of Mr. Daniels' vehicle
10 without a tag, without a license plate.

11 Q. And that's the reason you stopped him?

12 A. That is correct.

13 Q. And what do we have in G-4?

14 A. It's just an overall view of the driver's side from the
15 rear of -- standing at the rear of Mr. Daniels' vehicle.

16 Q. And now looking at G-5.

17 A. This would depict the front driver's and front passenger
18 compartment of the vehicle.

19 Q. And G-6?

20 A. This is a photo standing at the front driver's side
21 facing, or pointing back towards the rear to get an overall
22 shot of the driver's side of the vehicle.

23 Q. And G-7?

24 A. Would be the VIN for the vehicle.

25 Q. And G-8?

1 A. Going to be an overall shot of the passenger side of the
2 vehicle.

3 Q. G-9?

4 A. Going to be looking inside the passenger front compartment
5 of the vehicle.

6 Q. And G-10?

7 A. That's going to be looking in the rear compartment of the
8 vehicle on the passenger side.

9 Q. And looking at G-11?

10 A. That's going to be the toolbox that was in the back, or
11 the bed portion of Mr. Daniels' vehicle.

12 Q. And what is the significance of some of these photos that
13 you have taken with respect to the toolbox, the open vehicle
14 doors, the VIN number, etcetera?

15 A. It's evidentiary. It gives a view. I can't just take the
16 vehicle and put it anywhere, so we take photos to document the
17 evidence and what we were seeing.

18 Q. Okay. I am now showing you what's been marked as G-12.
19 What are we looking at here?

20 A. That is going to be the serial number of the American
21 Tactical rifle that was located in Mr. Daniels' vehicle.

22 Q. Okay. And with respect to G-13?

23 A. It's going to be a side-view, I believe this is just
24 before being zoomed in, on the serial number of the rifle.

25 Q. And what are we looking at in G-14?

1 A. That's going to be an overall view of the rifle itself.

2 Q. And what about G-15?

3 A. That's going to show the brand of the rifle, and it is an
4 American Tactical.

5 Q. And now looking at G-16, what are we seeing here?

6 A. It's going to be the model of the rifle.

7 Q. And Exhibit G-17?

8 A. It's going to be the opposite side. And again, it's going
9 to be just before zoomed in on the model.

10 Q. What about G-18?

11 A. That's going to be the Hellcat handgun that was located in
12 Mr. Daniels' vehicle.

13 Q. And G-19?

14 A. Going to be another overall shot of the Hellcat, same
15 thing.

16 Q. And looking at G-20?

17 A. That's going to be the serial number on the Hellcat
18 handgun.

19 Q. And with respect to G-21?

20 A. That's going to be the opposite side of the handgun
21 overall.

22 Q. And what are we looking at in G-22?

23 A. That's going to be the serial number for the handgun.

24 Q. And last but not least, Government's G-23?

25 A. That's going to be the identification card, Mississippi ID

1 card for Mr. Daniels.

2 Q. And you previously mentioned that you interviewed the
3 defendant also at the station?

4 A. Yes, that is correct.

5 Q. And do you see the person that you interviewed here in the
6 courtroom today?

7 A. Yes, it's Mr. Daniels.

8 Q. Could you please point him out and describe what he is
9 wearing?

10 A. Mr. Daniels is wearing a white shirt with a blue tie.

11 **MS. ROSE:** May the record reflect that he has
12 identified the defendant?

13 **THE COURT:** So reflected.

14 **MS. ROSE:** Thank you.

15 **BY MS. ROSE:**

16 Q. So you recorded that interview; is that correct?

17 A. We did, yes, ma'am.

18 Q. And have you listened to that interview?

19 A. I have, yes, ma'am.

20 Q. And is it a fair and accurate production of the interview
21 that you had that day?

22 A. Yes, ma'am.

23 Q. All right.

24 **MS. ROSE:** With the Court's permission, I'd like to
25 play G-24. And I do have transcripts as well that are G-24A.

1 I don't know --

2 **THE COURT:** Do you have copies for the jury?

3 **MS. ROSE:** I do, in fact, Your Honor.

4 **THE COURT:** Stan, if you would give a copy of the
5 transcript of this recording to each member of the jury.

6 **MS. ROSE:** Your Honor, may I go back to the table to
7 get our copy of the transcript?

8 **THE COURT:** I'm sorry, I am not able --

9 **MS. ROSE:** May I approach the evidence?

10 **THE COURT:** Of course you can.

11 **MS. ROSE:** And may I approach the witness?

12 **THE COURT:** Let's slow down a little bit. Do you now
13 intend to play the recording?

14 **MS. ROSE:** Yes, Your Honor. Before I do that, I
15 would like to ask just a couple of questions about the
16 transcript if possible?

17 **THE COURT:** If you wish, go ahead.

18 **MS. ROSE:** Thank you, Your Honor. May I approach
19 Mr. Bell?

20 **THE COURT:** Yes.

21 **BY MS. ROSE:**

22 Q. I am showing you what's been marked G-24A. Are you
23 familiar with that document?

24 A. I am.

25 Q. And what is it?

1 A. That is a transcript excerpt from the post-*Miranda*
2 interview of Mr. Daniels at the DEA office on April 25th, 2022.

3 Q. And did your office prepare that?

4 A. Yes.

5 Q. And is it a fair and accurate transcript of what's in the
6 recording?

7 A. Yes, ma'am.

8 **MS. ROSE:** Your Honor, may I have permission to play
9 G-24?

10 **THE COURT:** Now you're ready to play it?

11 **MS. ROSE:** Yes, sir.

12 **THE COURT:** I am having a little trouble hearing you,
13 it's probably my fault. But before you play the recording, I
14 need to instruct the jury on how they're to consider it.

15 Ladies and gentlemen, there is an instruction that I need
16 to give to you on the manner in which you should consider the
17 evidence that you are about to hear.

18 Exhibit Number 24 has been identified -- I'm sorry, 24A
19 has been identified as a typewritten transcript of the oral
20 conversation which can be heard on a tape recording received in
21 evidence as Exhibit Number 24. The transcript also purports to
22 identify the speakers engaged in this conversation.

23 Now, I have admitted these transcripts for the limited and
24 secondary purpose of aiding you in following the content of the
25 conversation as you listen to the tape recording and also to

1 aid you in identifying the speakers. You are specifically
2 instructed that whether the transcript correctly or incorrectly
3 reflects the content of the conversation, or the identity of
4 the speakers is entirely for you to determine based upon your
5 own evaluation of the testimony you have heard concerning the
6 preparation of the transcript and from your own examination of
7 the transcript in relation to your hearing of the tape
8 recording itself as the primary evidence of its own contents.
9 And if you should determine that the transcript is in any
10 respect incorrect or unreliable, you should disregard it to
11 that extent. It is what you hear on the tape that is evidence,
12 not the transcripts. You may proceed.

13 **MS. ROSE:** Thank you, Your Honor.

14 (Audio Recording Played).

15 **BY MS. ROSE:**

16 Q. Was that your entire interview?

17 A. No.

18 Q. I'm sorry. Was that the conclusion of your interview?

19 A. Yes.

20 Q. On the interview, the first voice that we hear, who is
21 that?

22 A. That's me.

23 Q. And then the second voice?

24 A. It is Patrick Daniels.

25 Q. And then the third voice?

1 A. It's going to be Keith Chappel, Special Agent with the
2 DEA.

3 Q. In the interview, the defendant references something, the
4 last time we met at Circle K?

5 A. Yes.

6 Q. What is he referring to?

7 A. Whenever I was in training, whenever I moved over to
8 Hancock County, I was in training learning the roads and
9 getting familiar with the area. We had an occasion to come
10 into contact with Mr. Daniels, at which time he was found with
11 multiple bags of marijuana and firearms with him at that time
12 as well.

13 Q. And did he admit being a user of marijuana on that
14 occasion?

15 A. Yes.

16 Q. And when was that?

17 A. I believe it was March 8th. I started there March 7th, I
18 think it was either March 8th or March 9th.

19 Q. Of this year?

20 A. Yes.

21 Q. Okay. I am going to show you what's been marked as
22 Government's Exhibit G-25.

23 **MS. ROSE:** May I approach him, Your Honor?

24 **THE COURT:** You may.

25 **BY MS. ROSE:**

1 Q. What are we looking at here, Mr. Bell?

2 A. This is the Mil Sport 556 rifle.

3 Q. And is that the one that you recovered from the vehicle?

4 A. It is, yes, ma'am.

5 Q. And when you recovered it, was it in that exact condition?

6 A. Minus the zip ties, the tag and the sticker, yes.

7 Q. Did it have a magazine with it?

8 A. It did, yes.

9 Q. Was the magazine affixed to the firearm?

10 A. It was. It was engaged into the port here, and it
11 contained 20 rounds of 556 ammunition.

12 **MS. ROSE:** Your Honor, may I approach?

13 **THE COURT:** You may.

14 **BY MS. ROSE:**

15 Q. I am going to show you what's been marked as G-25A and
16 G-25B. Do you recognize those items?

17 A. Yes, ma'am.

18 Q. And what are they?

19 A. This is the magazine. Government's Exhibit G-25A is the
20 magazine that was inserted into the rifle and contained.
21 Government's Exhibit G-25B, which is the 556 ammunition.

22 Q. And is that the ammunition that goes to that firearm?

23 A. It is, yes, ma'am.

24 Q. And they're in -- two of those items are in bags; is that
25 correct?

1 A. That is correct.

2 Q. Did you put those items in those bags?

3 A. Yes, ma'am.

4 Q. Did you write your name on them or anything?

5 A. Right here (indicating). Acquired by, sealed by,
6 witnessed by.

7 Q. And that's all you?

8 A. With the exception of the witnessed by, and I believe the
9 other one is going to be Keith Chappell. I can't read the
10 handwriting, but I believe it's Keith Chappell as the witness.

11 **MS. ROSE:** Your Honor, may I approach again?

12 **BY MS. ROSE:**

13 Q. I am going to now show you what's been marked G-26, as
14 well as G-26A and G-26B. Do you recognize those items?

15 A. Yes, ma'am, I do.

16 Q. And what is G-26?

17 A. G-26 is the Hellcat handgun that was located in Mr.
18 Daniels' vehicle.

19 Q. And what about G-26A?

20 A. G-26A is the ammunition that was loaded into G-26B, which
21 was also loaded into the firearm.

22 Q. And what is G-26B?

23 A. G-26B is the magazine.

24 Q. G-26A, ammunition, was inside G-26B which was affixed to
25 the firearm?

1 A. Correct.

2 Q. So when you found both of these firearms, they were
3 loaded?

4 A. Yes, ma'am.

5 Q. And is your name on those bags as well?

6 A. Yes, ma'am.

7 Q. Once you recovered those firearms, what did you do with
8 them?

9 A. I take them back to DEA. We processed the firearms by way
10 of taking photos of the firearms. We separate the ammunition
11 from the magazine and from the firearm itself, ultimately
12 processing it into a bag to insert it, or I'm sorry, to submit
13 it to our non-drug evidence custodian at DEA.

14 Q. Does anything else happen with the firearm?

15 A. Yes, the firearm was test fired. In fact, both of them
16 were test fired. I also ran eTrace reports, and I also
17 submitted specific information about the firearms to a special
18 agent of the ATF, Shane Lynes.

19 Q. What is an eTrace report?

20 A. An eTrace report, it gives me back information about the
21 firearm, where it was purchased from originally, where it came
22 from.

23 Q. Okay. And then you said you gave it to the ATF agent?

24 A. I did, yes, ma'am, so that he could also do his report.

25 Q. And that's with both firearms?

1 A. Correct.

2 Q. Okay.

3 MS. ROSE: May I approach again, Your Honor?

4 BY MS. ROSE:

5 Q. I'm going to show you what's been marked as G-28. What
6 are we looking at here?

7 A. This is the marijuana blunts that were located inside Mr.
8 Daniels' vehicle.

9 Q. And is your name also on that bag?

10 A. It is, yes, ma'am.

11 Q. What did you do with those blunts?

12 A. Same as with the firearms. We take them back to the
13 office, we'll process them, we'll take photos of it, and then
14 we'll submit it to our crime lab for their analysis.

15 Q. And is that what you did in this case?

16 A. Yes.

17 MS. ROSE: May I have just a moment, Your Honor?

18 BY MS. ROSE:

19 Q. In the course of your investigation, did you ascertain how
20 old Mr. Daniels is?

21 A. Twenty-six years of age.

22 Q. And that's how old he was on April 25th?

23 A. That is correct.

24 Q. And on April 25th of this year, would Mr. Daniels have had
25 any legal reason to be using marijuana?

1 A. No.

2 Q. But he was using it at the time of your stop?

3 A. Yes.

4 Q. And all of this occurred in Hancock County in the Southern
5 Division of the Southern District of Mississippi?

6 A. Yes, ma'am.

7 **MS. ROSE:** I have no further questions, Your Honor.

8 **THE COURT:** Cross-examination?

9 **CROSS-EXAMINATION**

10 **BY MR. WEBER:**

11 Q. I want to start off with a question based on the last
12 question that Ms. Rose asked you.

13 A. Yes, sir.

14 Q. You said you and your partner were doing patrol duties;
15 right?

16 A. Well, it wasn't patrol duties in a marked patrol car.

17 Q. So you testified that you were on patrol duties. Were you
18 on patrol duties or were you not on patrol duties?

19 A. I was assigned to the narcotics division, as I still am
20 today, and we were in an unmarked vehicle doing patrol duties.
21 We were doing things that patrol would do, but we were in an
22 unmarked vehicle.

23 Q. Okay. And you come across Patrick Daniels, you recognize
24 the truck because you have had a previous encounter with him;
25 correct?

1 A. Actually, I didn't recognize the truck because at this
2 particular time he had different after-market wheels on the
3 vehicle, so no, I didn't know the truck was actually Mr.
4 Daniels'.

5 Q. But you saw from the pictures you took that those wheels
6 were in the back of the truck; correct?

7 A. Right.

8 Q. And you conduct a traffic stop; is that right?

9 A. That's correct.

10 Q. Now, you are a task force agent assigned to the DEA;
11 right?

12 A. Yes, sir.

13 Q. Your parent law enforcement agency is Hancock County?

14 A. That's correct, yes, sir.

15 Q. I think you testified that you started there shortly
16 before May 8th or 9th; is that correct?

17 A. No, sir, I started there March 7th, I am sorry.

18 Q. I'm sorry, March. Prior to that, you were with Long Beach
19 Police Department?

20 A. Yes, sir, that's correct.

21 Q. And when you were with Long Beach department, were you
22 assigned as a task force officer with DEA?

23 A. I was, yes, sir.

24 Q. And now that you switched parent organizations, you're
25 learning the ropes then; right?

1 A. Learning the roads. The laws and that nature of things,
2 that doesn't really change from agency to agency. But my
3 biggest issue was I didn't know where I was at in Hancock
4 County physically, the roadways.

5 Q. So you and your partner are conducting these patrol duties
6 in an unmarked vehicle?

7 A. Correct.

8 Q. And can you describe for the jury what vehicle, what your
9 vehicle looks like?

10 A. Yes, it's a 2021 Chevy 1500 Silverado, has a silver
11 toolbox on the back. Depending on how you look at it, it could
12 be brown from one angle, it could be black from the other.

13 Q. And do you have police lights and sirens and the items or
14 tools associated with law enforcement?

15 A. Yes, I do. All of that is affixed to the vehicle.

16 Q. And by looking at your vehicle, can you tell that you're
17 law enforcement?

18 A. No, sir.

19 Q. And do you have what's commonly referred to as a dash-cam
20 to record traffic stops such as this one?

21 A. No, sir, I do not.

22 Q. Is it a policy of Hancock County or the DEA to have these
23 types of recording devices so that we can see exactly what was
24 happening at the time of the stop?

25 A. Not for narcotics, no, sir.

1 Q. And when you approach Mr. Daniels, were you wearing any
2 kind of equipment to record your interaction with Mr. Daniels
3 so that we could see exactly what was said or done?

4 A. No, sir, I was not.

5 Q. And that's because there's a policy that doesn't require
6 you to have these types of tools or items to gather evidence
7 and collect evidence during a traffic stop?

8 A. That is correct, nor is it issued.

9 Q. Excuse me?

10 A. It's not issued, either.

11 Q. Now, you said when you saw the vehicle, you stopped the
12 vehicle, you approached the vehicle and you smelled the odor of
13 marijuana; is that correct?

14 A. That's correct, yes, sir.

15 Q. Is it your testimony that Mr. Daniels was actively engaged
16 in smoking marijuana?

17 A. No, sir. I can tell you that I just smelled marijuana
18 almost immediately upon contact.

19 Q. And subsequent to a search of the vehicle, you found what
20 you describe as blunts; is that correct?

21 A. Yes, sir.

22 Q. Can you tell the jury what a blunt is?

23 A. A blunt, or a marijuana cigarette, would be something that
24 is started out as a usual size, I don't know, four- or
25 five-inch cigarette that is either rolled up with marijuana or

1 a blunt wrapper that's rolled up with marijuana, and once the
2 subject uses the marijuana, it's the burnt end.

3 Q. And you collected the burnt end of those blunts, then;
4 correct?

5 A. Yes, sir, that's correct.

6 Q. And that's one of the exhibits in front of you?

7 A. Yes, sir, that's correct.

8 Q. And those blunts were found in an ashtray?

9 A. Yes, sir, that's correct.

10 **MR. WEBER:** Government's Exhibits 1, 2, 10 and 11,
11 the pictures.

12 **THE COURT:** I believe all of the photographs -- those
13 photographs? She didn't put them back? All right.

14 **BY MR. WEBER:**

15 Q. I am showing you Government Exhibit 1. And what you
16 testified to is that after you gathered the firearms and the
17 marijuana, you collected them and took this picture,
18 Government's Exhibit 1?

19 A. That's correct, yes, sir.

20 Q. And this is not how these items were situated in the
21 vehicle?

22 A. No, sir.

23 Q. Government Exhibit 2 appears to be a closer image of
24 focusing in on what you describe as the blunts; is that
25 correct?

1 A. That's correct, yes, sir.

2 Q. And Mr. Daniels said that he was living out of back of his
3 car, or truck?

4 A. Yes, sir.

5 Q. And so we have evidence that that's -- some truth to that.
6 We see, what, a pillow and a blanket; is that right?

7 A. Yes, sir.

8 Q. He told you that the AR-15 belonged to someone else?

9 A. Yes, sir.

10 Q. You did something called an eTrace report?

11 A. Correct.

12 Q. And the eTrace tells us when that firearm was purchased
13 until the time that it was acquired or seized by you, then;
14 correct?

15 A. Yes, sir.

16 Q. Do you recall looking at the eTrace report of that
17 particular firearm, the AR-15, who purchased that firearm?

18 A. I do not, not without looking at the eTrace report. I'm
19 sorry, I don't recall that name.

20 Q. Do you have that eTrace report?

21 A. It's in my reports, but I don't have it with me.

22 Q. We'll get back to that. The bottom line is, is Patrick
23 Daniels wasn't the purchaser of that firearm?

24 A. I can't recall. I can't recall the names that was on
25 eTrace.

1 **MR. WEBER:** Your Honor, may we take a break or try to
2 find this report?

3 **THE COURT:** I'll let you take it up -- do you have
4 his report available?

5 **MS. ROSE:** I don't believe we have the eTrace here in
6 court, Your Honor.

7 **THE COURT:** Was that provided to counsel opposite
8 during discovery?

9 **MR. WEBER:** No, it wasn't.

10 **THE COURT:** It was not? Let's get back to that later
11 on. Let's go ahead and proceed with your cross-examination.
12 He says he doesn't know. He says he doesn't know for sure, but
13 it may be in his report.

14 **BY MR. WEBER:**

15 Q. You also did an eTrace report on the 9-millimeter pistol?

16 A. That's correct, yes, sir.

17 Q. And who was the original purchaser of that particular
18 firearm?

19 A. I don't recall, sir.

20 Q. And you don't know whether or not it was Patrick Daniels?

21 A. No, sir.

22 Q. You don't know who it was?

23 A. No, sir.

24 Q. In preparing for your testimony today, did you review
25 these eTrace reports?

1 A. I did not, no, sir.

2 Q. You testified that, and we heard on the recording that
3 there was a previous interaction between you and Mr. Daniels
4 approximately on March 9th at a Circle K?

5 A. Yes, sir.

6 Q. And you testified that there were firearms and marijuana?

7 A. Correct, yes, sir.

8 Q. And did you charge Mr. Daniels with possession of those
9 firearms?

10 A. I did not, no, sir.

11 Q. Did anyone charge Mr. Daniels with possession of those
12 firearms back on April the 25th?

13 A. I believe Mr. Daniels was only charged with an outstanding
14 warrant on that date.

15 Q. So despite the fact that you found him in possession of
16 firearms and marijuana, you didn't charge him with those
17 offenses?

18 A. No, sir, I did not.

19 **MR. WEBER:** Court's indulgence.

20 **BY MR. WEBER:**

21 Q. Going back to this encounter on March 9th at Circle K, did
22 you do a report on that encounter?

23 A. I did not. And the reason I did not is because I didn't
24 have access to Hancock County's database. I was two days in
25 and did not have access to anything, so I was just attempting

1 to do what I could to justify my time, which is learn the
2 roadways and participate in details with the other officers.

3 Q. Officer Bell, you understand that what reports -- the
4 purpose of reports is to help us remember what happened and
5 give us details about what went down or the interaction between
6 you and someone like Mr. Daniels; right?

7 A. That's correct, but I wasn't the lead agent on that,
8 either.

9 Q. Have you seen any reports regarding the stop or the
10 encounter on March 9th of 2022?

11 A. No, sir, I have not.

12 **MR. WEBER:** No further questions.

13 **THE COURT:** Any redirect examination, Ms. Rose?

14 **MS. ROSE:** No, Your Honor. Thank you.

15 **THE COURT:** Thank you, sir, you may step down.

16 **WITNESS:** Thank you, Your Honor.

17 **THE COURT:** Who is your next witness?

18 **MR. BUCKNER:** ATF Agent Shane Lynes. Your Honor, may
19 I move the exhibits back to the exhibit table?

20 **THE COURT:** Insist. Thank you, Mr. Buckner.

21 **MR. BUCKNER:** Thank you, your Honor.

22 **THE COURT:** Would you raise your right hand and be
23 sworn, please.

24 (Oath Administered)

25 **SHANE LYNES,**

1 having first been duly sworn, testified as follows:

2 DIRECT EXAMINATION

3 BY MR. BUCKNER:

4 Q. Can you please introduce yourself and spell your last name
5 for the record?

6 A. My name is Shane Lynes, L-Y-N-E-S, and I am a federal
7 agent for the Bureau of Alcohol, Tobacco, Firearms &
8 Explosives, commonly known as the ATF.

9 Q. How long have you worked as an ATF agent?

10 MR. WEBER: Your Honor, we would accept Special Agent
11 Lynes as an expert in the identification of firearms.

12 THE COURT: Thank you. You may proceed.

13 BY MR. BUCKNER:

14 Q. How long have you worked as a special agent with the ATF?

15 A. I have been with ATF since 2007. Prior to that, I started
16 my law enforcement career in 2001, and then prior to that I was
17 in the Air Force.

18 Q. And you have heard the defense acknowledge that they're
19 going to accept your expert qualifications. But briefly, have
20 you received any special training for determining where guns
21 are manufactured and whether or not they qualify as firearms?

22 A. Yes, I have.

23 Q. Tell the ladies and gentlemen of the jury a little bit
24 about that.

25 A. The regular training or the advanced training?

1 Q. The training specifically related to interstate nexus?

2 A. So after I was an agent for a few years, I went to the
3 Firearms Technology Branch up in West Virginia where they have
4 an assortment of over 10,000 firearms. There, I examined
5 thousands of firearms and I learned to use a systematic
6 scientific method where I would look at the firearm, write down
7 the observations on it, form a hypothesis, and then through my
8 personal, knowledge, experience, training, education, and the
9 research I conducted on that, I would test that hypothesis.

10 Q. And that training that you received, those techniques that
11 you learned, did you apply those to what you did in this case?

12 A. I did.

13 Q. And specifically, did you have the opportunity to examine
14 two firearms related to this case?

15 A. I did, and I also test fired them.

16 Q. And did you generate a report after you conducted your
17 initial examination?

18 A. So I was first contacted in May of 2020, or 2022 on this
19 case. I examined them, the markings off of the photos. And
20 then last week I actually physically examined the firearms, to
21 include function test them.

22 Q. And so you did an initial examination of photographs and
23 then physically examined the firearms after that?

24 A. That is correct.

25 **MR. BUCKNER:** Your Honor, may I approach the table?

1 **THE COURT:** You may.

2 **BY MR. BUCKNER:**

3 Q. I have handed you what's been admitted as G-27. Is that
4 the initial report that you prepared after your viewing of the
5 photographs?

6 A. Yes, sir.

7 Q. And were you able to determine, based on reviewing the
8 photographs, where you believed those firearms to be
9 manufactured?

10 A. That is correct.

11 Q. And that's reflected in your report?

12 A. Absolutely.

13 **MR. BUCKNER:** May I approach again, Your Honor?

14 **THE COURT:** Yeah. You don't have to ask me again.
15 If you need to come forward, do so.

16 **MR. BUCKNER:** Thank you, Your Honor.

17 **THE COURT:** Sure.

18 **BY MR. BUCKNER:**

19 Q. Agent Lynes, I have handed you what's been marked as G-25.
20 Can you make sure that's safe?

21 A. I already have, yes, sir.

22 Q. You're good?

23 A. Yes, sir.

24 Q. And in addition to G-25, there's G-25A and G25B. Do you
25 see those?

1 A. Yes, sir, I do. I am not familiar with G-25B, the
2 ammunition.

3 Q. Okay. But G-25A, can you tell the ladies and gentlemen of
4 the jury what that is?

5 A. G-25A is a magazine capable -- that I was told that was
6 with this firearm, and it's considered high-capacity magazine.

7 Q. And let's go back to G-25A. -- I mean G-25, I apologize,
8 the firearm itself.

9 A. Yes, sir, I have it.

10 Q. So when you examined G-25, did you examine that and
11 conduct research into that firearm?

12 A. I did.

13 Q. And based upon your examination and research, do you have
14 an opinion as to whether this gun qualifies as a firearm under
15 federal law?

16 A. It does qualify as a firearm. I also test fired it last
17 week and it did function as designed.

18 Q. And, also, were you able to determine where that firearm
19 was manufactured?

20 A. Yes, I did through -- so part of what I do is called
21 interstate commerce, and what interstate commerce is, is from
22 one place in one state to another place in another state, but
23 not within the same state. So for instance, if I was in, say,
24 Mississippi and traveled to Louisiana and crossed the state
25 line going into another state, that's effecting interstate

1 commerce. So they also have a thing called foreign commerce,
2 which is -- which is like within the United States or its
3 territories to another country that's not controlled or
4 operated by the United States. So that's interstate and
5 foreign commerce.

6 Q. So when you examined G-25, based on your examination and
7 research, what was your opinion as to where that firearm was
8 manufactured?

9 A. It was not manufactured in the State of Mississippi.

10 Q. Now, are there markings on that firearm that would appear
11 to imply where it was made?

12 A. It would appear so. Part of what I do, I have a library
13 in my office of reference material, but we also have what's
14 called ATF literature, which is a marking variance. So the
15 best way to explain what a marking variance is, say that I own
16 the rights to a firearm, I am an engineer, I designed it, this
17 is what I want, but I don't have the materials or the machine
18 shop to actually make it, but I know a friend that does, say,
19 in Alabama. So I can apply to the ATF, the Firearms Industry
20 Program Branch, and ask for a marking variance. So after 1968,
21 the Gun Control Act, it required manufacturers to actually put
22 where it was made, the importer's information, and use a unique
23 serial number that could not be duplicated. So in this
24 particular case with a marking variance, I can put my
25 information on there saying it was made right here in Gulfport,

1 Mississippi, but it was really made in Alabama by my friend if
2 that's approved by ATF.

3 Q. So that specific firearm, the markings on that, where
4 would it appear that it was manufactured?

5 A. By American Tactical in Summerville, South Carolina.

6 Q. Now, based on your research and your examination of that
7 firearm, where was that gun actually made?

8 A. In Indiana by BCI Defense.

9 Q. And did the manufacturer of that firearm obtain a variance
10 in order to put that South Carolina information on the gun when
11 it was actually manufactured in Indiana?

12 A. Yes, sir, they did.

13 Q. But regardless, that gun wasn't made in Mississippi, was
14 it?

15 A. No.

16 Q. So if that firearm was recovered in Mississippi, do you
17 have an opinion as to whether it would have had to travel in
18 interstate commerce in order to be here?

19 A. It would've had to -- to be possessed in Mississippi, it
20 would've had to effect interstate commerce to be here today.

21 Q. You also examined a handgun; is that correct?

22 A. That is correct, it's a Springfield.

23 Q. And were you able to determine where that firearm was
24 manufactured as well?

25 A. Yes. That's actually manufactured in Croatia and then

1 imported through Springfield Armory. So earlier when I was
2 talking about foreign commerce, Croatia is actually part of
3 Europe, not part of the United States, so it would've had to
4 effect foreign commerce to be inside the United States.
5 Springfield Armory has been importing guns from Croatia since
6 about 2003, and so that was imported there, assembled, finished
7 assembly, and then shipped from Springfield, Illinois.

8 Q. I have handed you what's been marked G-26. Is that the
9 Springfield Armory Hellcat 9-millimeter that you examined?

10 A. Trying to look at the serial number through the bag. That
11 is correct, yes, sir.

12 Q. And did you also test fire that weapon?

13 A. I did, and it functioned as designed.

14 Q. So for that gun to have been recovered in Mississippi, do
15 you have an opinion as to whether or not it would've had to
16 travel in interstate or foreign commerce?

17 A. Both.

18 Q. It would've had to do both?

19 A. Yes, sir.

20 **MR. BUCKNER:** May I have the Court's indulgence for
21 one moment, Your Honor?

22 If I may have use of the Elmo, Your Honor.

23 **THE COURT:** Sure.

24 **BY MR. BUCKNER:**

25 Q. Looking here, this is Government's Exhibit G-27. I

1 believe you have a copy in front of you. That's the report you
2 prepared from the photographs of the firearms; is that correct?

3 A. Yes, sir. And on Exhibit 1, when I say it was
4 manufactured by HS Product, it's spelled with a K, that's
5 actually the correct spelling on how Croatia spells it.

6 Q. Exhibit one, that's the handgun; is that correct?

7 A. Correct, the Springfield Armory. That's one of their R
8 series. It came out in 2019. They actually make like a
9 Hellcat, a Bobcat, and a Firecat. It's out of their R series.

10 Q. And Exhibit 2 is the rifle?

11 A. That is correct.

12 **MR. BUCKNER:** Tender the witness, Your Honor.

13 **THE COURT:** Cross-examination?

14 **CROSS-EXAMINATION**

15 **BY MR. WEBER:**

16 Q. Special Agent Lynes, you are a recognized expert in
17 firearm identification and interstate commerce?

18 A. Yes, sir, that is correct. I also teach it.

19 Q. Right. And you are also a special agent with the ATF?

20 A. That is correct, a criminal investigator.

21 Q. ATF is Alcohol, Tobacco, Firearms & Explosives, ATFE,
22 then; right?

23 A. Correct, it's usually referred to on official documents,
24 BATFE, which stands for the Bureau of Alcohol, Tobacco,
25 Firearms & Explosives.

1 Q. What's the focus or the mission of the ATF?

2 A. Firearms, violent crime.

3 Q. And other than what you have just testified to as far as
4 whether or not these are considered firearms, whether or not
5 these exhibits are considered firearms, and whether or not they
6 traveled in interstate commerce, were you asked to do anything
7 else in this case concerning those two exhibits?

8 A. Besides the interstate nexus and test fire them, no.

9 **MR. WEBER:** No further questions.

10 **THE COURT:** Any redirect examination?

11 **MR. BUCKNER:** No, Your Honor.

12 **THE COURT:** You may be excused.

13 Who is your next witness?

14 **MS. ROSE:** Your Honor, the government would call
15 Stephanie Armas, who is a chemist with the DEA lab.

16 (Oath Administered)

17 **THE COURT:** You may proceed.

18 **MS. ROSE:** Thank you, Your Honor.

19 **STEPHANIE ARMAS,**

20 **having first been duly sworn, testified as follows:**

21 **DIRECT EXAMINATION**

22 **BY MS. ROSE:**

23 Q. Good afternoon.

24 A. Good afternoon.

25 Q. Could you please state your name and spell your last name

1 for the record?

2 A. My name is Stephanie Armas, last name A-R-M-A-S.

3 Q. Thank you, Ms. Armas. And what is your occupation?

4 A. I am a forensic chemist for the Drug Enforcement
5 Administration, short for DEA.

6 Q. And how long have you worked in that field?

7 A. I have worked for the DEA since 2020.

8 Q. And what is your educational background?

9 A. I have two bachelor's degrees, one in forensic science and
10 another one in chemistry from the University of Central
11 Florida, as well as a master's degree in chemistry, also from
12 the University of Central Florida.

13 Q. Do you possess any certificates or licenses?

14 A. I do not.

15 **MS. TYNES:** Your Honor, the defendant will stipulate
16 that she's an expert in the field of, I believe, forensic
17 chemistry.

18 **THE COURT:** Thank you, Ms. Tynes. You may proceed.

19 **MS. ROSE:** Thank you, Your Honor.

20 **BY MS. ROSE:**

21 Q. In your current job, what things do you do on a day-to-day
22 basis?

23 A. So my day-to-day job consists of analyzing various cases
24 from different agencies, such as FBI, DEA, ATF, that deals with
25 the analysis of the presence or absence of controlled

1 substances. And I write a report on those findings and testify
2 when called upon to do so.

3 **MS. ROSE:** Your Honor, may I approach the table?

4 **THE COURT:** Sure.

5 **BY MS. ROSE:**

6 Q. And were you working in that capacity on July 20th of this
7 year?

8 A. Yes, ma'am.

9 **MS. ROSE:** May I approach the witness, Your Honor?

10 **THE COURT:** Sorry, I did not hear you.

11 **MS. ROSE:** May I approach the witness?

12 **THE COURT:** Yes. And you don't have to ask me. If
13 you need to, just go ahead and do it.

14 **MS. ROSE:** Thank you, Your Honor.

15 **BY MS. ROSE:**

16 Q. I'm going to show you what's been marked as G-29, as well
17 as G-28.

18 A. May I? Thank you, Your Honor.

19 Q. Looking at G-29, what is that?

20 A. Looking at G-29, this is the chemical analysis report that
21 I wrote up based on my findings.

22 Q. How do you prepare that report?

23 A. Well, when the evidence gets submitted and I pick it up, I
24 go through my analysis, protocol, I take a gross weight, which
25 is the weight of the entire packaging; a net weight, which is

1 just the weight of the substance that I am going to analyze.
2 And I perform, in this case, three analyses, microscopic --
3 microscopic examination, a color test 4-AP, and gas
4 chromatography/mass spectrometry, short for GCMS. I close up
5 and write what the -- what I report on those findings.

6 Q. Do you recognize G-28?

7 A. Yes, ma'am.

8 Q. What is that?

9 A. So, this is the exhibit that was submitted to the
10 laboratory and the exhibit which I analyzed. And I can
11 recognize it based on my seal that's at the bottom, and the
12 lens number which is the unique identifier.

13 Q. So you performed your analysis on the items in that bag?

14 A. Yes, ma'am.

15 Q. And what conclusion did you come to upon completing your
16 analysis?

17 A. I concluded the presence of marijuana.

18 Q. Your Honor, may I publish G-29?

19 **THE COURT:** Sure.

20 **BY MS. ROSE:**

21 Q. So looking at this here, just to help the jurors
22 understand your report, so Exhibit 1, what is that referring
23 to?

24 A. Exhibit 1 is referring to the exhibit that was submitted.

25 Q. Okay. And it says "substance is identified as marijuana"?

1 A. Yes, ma'am.

2 Q. And what does the weight mean?

3 A. The net weight where it says .446 grams, plus or minus
4 .002 grams, is the weight of just the substance. So what was
5 submitted was multiple cigarette butts. I described the
6 packaging as cigarette or cigars, and it contained plant
7 material. The net weight, what it's called, is just the weight
8 of that plant material.

9 Q. What is the reserve weight, what does that mean?

10 A. The reserve weight just indicates whatever weight was left
11 upon completion of my analysis.

12 Q. And at the bottom where it talks about your analysis,
13 those are the tests that you described earlier?

14 A. I am sorry, can you -- do you refer to the summary of
15 tests?

16 Q. Yes.

17 A. Yes, ma'am, those are the tests that I performed.

18 Q. And in your conclusion, was what was found in these
19 cigarette butts was marijuana?

20 A. That is correct.

21 **MS. ROSE:** May I have just a moment, Your Honor?

22 **BY MS. ROSE:**

23 Q. And do you offer all of your testimony today to a
24 reasonable degree of scientific certainty?

25 A. Yes, ma'am.

1 **MS. ROSE:** I have no further questions, Your Honor.

2 **THE COURT:** Cross-examination, Ms. Tynes?

3 **MS. TYNES:** Thank you, Your Honor.

4 May I proceed?

5 **THE COURT:** Yes, you may.

6 **CROSS-EXAMINATION**

7 **BY MS. TYNES:**

8 Q. Good afternoon.

9 A. Good afternoon.

10 Q. Ms. Armas, you don't actually participate in the actual
11 investigation of the case; is that correct?

12 A. I do not.

13 Q. So you're not present at the -- when the evidence is
14 collected; is that correct?

15 A. I do not.

16 Q. You just analyze the materials at the lab?

17 A. Yes, ma'am.

18 Q. So as far as this case, you don't have any direct
19 knowledge about the specific facts regarding the case; is that
20 correct?

21 A. That is correct.

22 Q. Okay. And again, you did not collect the sample involved;
23 is that correct?

24 A. That is correct.

25 Q. And the samples, it's collected, generally, by law

1 enforcement?

2 A. I would assume so.

3 Q. You would assume so, okay. Somehow it's collected, it's
4 put in a bag; is that correct?

5 A. Yes, ma'am.

6 Q. And the bag is sealed, generally speaking?

7 A. Yes, ma'am.

8 Q. And then how does it -- it gets to your lab. Do they mail
9 it to the lab?

10 A. I believe in this case the task force officer hand
11 delivered it.

12 Q. To Miami?

13 A. I believe so.

14 Q. Would that be noted on your chain of custody?

15 A. That will be noted on the DEA 7.

16 Q. And do you have a copy of that with you?

17 A. I do.

18 Q. Can you have a look?

19 A. Yes, ma'am.

20 Q. Thank you.

21 A. So, in fact, it was received from Ray W. Bell.

22 Q. Directly to the lab in Miami?

23 A. Yes, ma'am.

24 Q. Okay. And the date of that would've been on May 3 of
25 2022; is that correct?

1 A. Yes, ma'am.

2 Q. And I believe it was logged in by Clarissa, I am not going
3 to attempt to pronounce her last name?

4 A. Clarissa M. Karasalis (phonetic).

5 Q. And that's somebody who works at the lab; is that correct?

6 A. That's correct.

7 Q. Generally speaking, when it's logged in the lab, it's
8 going to be signed somewhere on the packaging, is that correct,
9 or at least on the form, the chain of custody form; is that
10 correct?

11 A. So when evidence comes to our laboratory, it goes through
12 a laboratory information management system. So everything gets
13 logged into the management system and it can be tracked.

14 Q. Okay. And that was done in this case; is that correct?

15 A. Correct.

16 Q. And the material that we're talking about in this case,
17 it's marijuana blunts; is that correct?

18 A. Yes.

19 Q. So like small little bitty burnt ends of what appears to
20 be cigarettes; is that correct?

21 A. Yes, ma'am.

22 Q. Something you would typically find in an ashtray; is that
23 correct?

24 A. I cannot testify as to where it was found.

25 Q. And in this particular case, it was analyzed, I believe,

1 last week; is that correct?

2 A. Yes, ma'am, I believe so.

3 Q. And then you provided the report that you produced; is
4 that correct?

5 A. Yes, ma'am.

6 Q. Now, marijuana is a plant material; is that correct?

7 A. Yes, ma'am.

8 Q. And because it's a plant material, it also contains other
9 substances other than THC; is that correct?

10 A. As a plant, marijuana contains other cannabinoids that are
11 inherent to the plant.

12 Q. And some of those things, for example, would be like CBD;
13 is that correct?

14 A. Yes, ma'am.

15 Q. And CBC; is that correct?

16 A. It could contain that. I don't believe I noted that in my
17 findings.

18 Q. Okay. Or is it THCA, that's another substance found in
19 marijuana; is that correct?

20 A. It could be found in marijuana.

21 Q. And these are all naturally occurring substances because
22 it's plant material; is that correct?

23 A. Yes, ma'am.

24 Q. And when you test it, and you use the -- in this
25 particular case, I believe the gas chromatography/mass

1 spectrometry test, is that correct, is that what you used in
2 this case?

3 A. One of the tests.

4 Q. One of the tests. So there were several tests, one is the
5 AP color test; is that correct?

6 A. Yes, ma'am.

7 Q. And that's basically you put something on it and it turns
8 a particular color if there's marijuana in there; is that
9 correct?

10 A. The way that the color test is performed, there's two
11 agents or two solvents, if you may. Once those solvents
12 interact with the substance in the plant material, if it turns
13 blue it indicates that the content of THC is greater than the
14 possible content of the CBD.

15 Q. When you do the gas chromatography/mass spectrometry test,
16 it will show if there's other substances involved as well; is
17 that correct?

18 A. Yes.

19 Q. And generally speaking, it prints out kind of a test
20 result where there's, I think, best described as peaks?

21 A. Yes, ma'am.

22 Q. In this case there was some indication that there was
23 other substances involved in the sample; is that correct?

24 A. Yes, ma'am.

25 Q. I believe it looked like maybe six other substances?

1 A. I do not recall. I would have to refresh my memory by
2 looking at the results.

3 Q. But at least more than THC?

4 A. Yes, ma'am.

5 Q. And that is not noted on the report that you provided; is
6 that correct?

7 A. The report contains a statement that is called OP
8 (phonetic) checked, I believe, where I mention that the THC to
9 internal standard ratio is greater than one. And I looked at
10 the other peaks, but they were not peaks of interest.

11 Q. In this case, I believe you said the net weight was
12 .446 grams; is that correct?

13 A. That is correct.

14 Q. Would that include the other substances as well?

15 A. Yes, ma'am.

16 Q. Yes, okay. So in this particular case, the actual amount
17 of the controlled substance could be less than .446 grams; is
18 that correct?

19 A. A quantitation was not performed.

20 Q. So you can't answer that question; is that correct?

21 A. I cannot.

22 Q. And just for reference, a general, like a sugar packet
23 that you can get at a restaurant or something like that,
24 generally speaking has about 3.5 grams of sugar, do you know?

25 A. I do not know.

1 Q. Would you disagree -- does that sound accurate as a
2 forensic chemist?

3 A. I cannot testify to something I do not know.

4 Q. But this would be .446 grams is substantially less than
5 that, less than 3.5 grams; is that correct?

6 A. .446 is less than 3.5 grams, that is correct.

7 MS. TYNES: I tender the witness.

8 THE COURT: Any redirect examination for this
9 witness?

10 MS. ROSE: No, Your Honor.

11 THE COURT: Thank you very much. Madam, you may be
12 excused.

13 WITNESS: Thank you, Your Honor.

14 THE COURT: Who is your next witness?

15 MS. ROSE: The government does not have any
16 additional witnesses, Your Honor.

17 THE COURT: I am really sorry, Ms. Rose, but you talk
18 really fast. I don't hear at the same speed that you talk.
19 What did you just say?

20 MS. ROSE: We do not have any additional witnesses,
21 Your Honor.

22 THE COURT: Does that mean the government rests?

23 MS. ROSE: That is correct, Your Honor.

24 THE COURT: That is the proper terminology, and I
25 thank you. Ladies and gentlemen of the jury, the government

1 has rested, which means that they have produced all of the
2 evidence they intend for you to hear. I will need to take up
3 some matters with the lawyers outside of your presence before
4 we can proceed. Please go back to the jury room.

5 (JURY OUT AT 4:24 P.M.)

6 MR. BUCKNER: Your Honor, may I return the exhibits
7 to the table?

8 THE COURT: Yes, please. Thank you.

9 Ms. Tynes, Mr. Weber, the government has rested. Any
10 motions?

11 MR. WEBER: Yes, Your Honor.

12 Your Honor, the defendant at this time, pursuant to Rule
13 29 of the Rules of Criminal Procedure, moves the Court for a
14 judgment of acquittal. Looking at the evidence presented by
15 the government in the light most favorable to the government,
16 they have failed to prove beyond a reasonable doubt the
17 elements of the offense. Specifically, whether -- they failed
18 to prove that Patrick Daniels knew he was an unlawful user and
19 that he was a member of this group that was prohibited from
20 possessing a firearm.

21 I also renew my motion to dismiss for vagueness on its
22 face and as applied. Going back to something that the Court
23 said in giving the preliminary instructions, the Court noted
24 that a user, as that term is defined by the Court, I believe
25 the Court said recent use or active use, there's no evidence

1 presented by the government of recent use or active use. The
2 evidence was on the occasion of the stop, which was April 25th,
3 he was found in possession of firearms and he was found in
4 possession of partially burnt, what was referred to as blunts.
5 There's no evidence that he was actively using this marijuana
6 at the time of the stop.

7 **THE COURT:** What about his statement, that he uses
8 marijuana 14 times a month from high school?

9 **MR. WEBER:** Your Honor, I understand that statement
10 was made, Your Honor, but there's no timeframe in which to put
11 that statement in. There's no, for example, urinalysis, hair
12 sample testing that has been presented to the jury to show that
13 the substance is even in his system. There was testimony that
14 six weeks prior, approximately on March the 9th, he was found
15 in possession of marijuana. But again, there's no indication
16 that at that point he was notified that this -- written a
17 ticket or arrested for this particular charge.

18 **THE COURT:** Let me put it to you this way: If you
19 admit that you use marijuana and that you use it frequently,
20 and at the time of your arrest you're found in possession of
21 the remnants of marijuana cigarettes, could not the jury infer
22 from those facts that you are a user?

23 **MR. WEBER:** Your Honor, that kind of --

24 **THE COURT:** Wouldn't that be a question of fact for
25 the jury to resolve?

1 **MR. WEBER:** Well, that's something that occurred in
2 the case out of Utah, the *Morales-Lopez*. When the district
3 judge -- the evidence in that case was that the defendant was
4 found in possession of methamphetamine, and then admitted some
5 five weeks prior to using methamphetamine. But what the Court
6 found is that, and I'll read from the case, that Mr. Morales
7 admitted to using methamphetamine and marijuana in late
8 November or early December of 2019. On January 10th of 2020,
9 the same day he was arrested, he possessed methamphetamine.
10 Although the government argued that Mr. Morales' possession of
11 methamphetamine is indicative of use, the government presents
12 no evidence that Mr. Morales actually used drugs at any point
13 in the five weeks leading up to his arrest. So we don't
14 have --

15 **THE COURT:** I suppose Mr. Morales didn't confess to
16 it?

17 **MR. WEBER:** That's true. We do have a statement, and
18 I am not sure what the government can attach, as far as
19 evidence, to that statement, perhaps the burnt marijuana in the
20 glove compartment, but there's no evidence when that substance
21 was used or not used.

22 **THE COURT:** Again, would that not be a question of
23 fact for the jury to determine?

24 **MR. WEBER:** Perhaps.

25 **THE COURT:** All right. Here is what I am going to

1 do. I am going to consider your motion as two motions, one
2 which is the judgment of acquittal on the question of whether
3 the government has proven that he is a user beyond a reasonable
4 doubt. And then I am going to bifurcate that, if you will,
5 into the second motion for judgment of acquittal, which has to
6 do with the facial attack on the constitutionality of the
7 statute itself. I think I want to keep those things separate.

8 **MR. WEBER:** Yes, Your Honor. But I do want the
9 record to be clear that based on the facts presented by the
10 government today, I believe there is now an as-applied attack
11 to 922(g)(3) to the facts as presented by the government.

12 **THE COURT:** All right. Does the government wish to
13 respond?

14 **MS. ROSE:** Yes, Your Honor. With respect to the
15 defendant's Rule 29 motion, especially considered in the light
16 most favorable to the government, there has been evidence
17 presented today that the defendant was actively using at this
18 time. First and foremost, you heard the testimony of Officer
19 Bell who said he smelled marijuana upon approaching the
20 vehicle, and that was the reason he did the search of the car.

21 Additionally, we have the defendant's statements that he
22 was a user, that he used 14 days a month. April is a
23 30-day-a-month month, so therefore he was probably using it
24 every other day that month.

25 Additionally, he talks about the incident at Circle K

1 where he was using at that time. He talked about how he has
2 been using since he graduated from high school. He is 26 years
3 old. So he as been a regular user for eight years. The
4 government would argue that there's sufficient evidence to say
5 that Mr. Daniels is an unlawful user and that the jury can make
6 that inference based on what they have heard.

7 With respect to the other argument, the government would
8 rest on its motion. Thank you.

9 **THE COURT:** Anything else, Mr. Weber?

10 **MR. WEBER:** No, Your Honor.

11 **THE COURT:** All right. I am going to do it this way.
12 On your motion for judgment of acquittal based upon the failure
13 of the government to prove the essential element of user beyond
14 a reasonable doubt, I must take the evidence which is offered
15 by the government in the light most favorable to the
16 government, and granting to that evidence all the more
17 reasonable inferences that may be drawn from that evidence, and
18 under those circumstances your motion should be denied.

19 Your motion with regard to the as-applied, or facial
20 constitutional challenge to the statute itself, I am going to
21 take that matter under advisement. And I am going to submit
22 the matter to the jury at some point and come back later with a
23 ruling on the constitutionality, if you will, the motion that
24 you have made, I am going to call it the second motion, which
25 challenges the vagueness of this particular statute. Is that

1 clear?

2 **MR. WEBER:** Yes, Your Honor. Thank you.

3 **THE COURT:** So your second motion, which has to do
4 with the constitutionality aspect of the statute is reserved
5 pursuant to Rule 29(b). I do intend to submit the matter for
6 the jury's resolution and ultimate reaching of a verdict, and
7 then I will consider the motion after the verdict.

8 With regard to your first motion, the one that has to do
9 with the government's failure to prove beyond a reasonable
10 doubt all the essential elements, that is denied.

11 Anything else?

12 **MR. WEBER:** No, Your Honor.

13 **THE COURT:** Then I have a question. Are you ready to
14 proceed?

15 **MR. WEBER:** Yes, Your Honor.

16 **THE COURT:** Does the defendant intend to call any
17 witnesses?

18 **MR. WEBER:** No, Your Honor.

19 **THE COURT:** Does the defendant intend to testify?

20 **MR. WEBER:** No, Your Honor.

21 **THE COURT:** Then let me take up this matter, then. I
22 am going to do it this way.

23 Mr. Daniels, your attorney, Mr. Weber, who is very
24 experienced and enjoys a very good reputation with this Court
25 as being a good lawyer, has indicated to the Court that you do

1 not intend, or your team does not intend to offer any evidence
2 or testimony in the case, and they also indicated that you do
3 not intend to testify yourself. You have a constitutional
4 right to remain silent, you don't have to testify at all. And
5 I will instruct the jury that they cannot consider your
6 election to remain silent as an indication of guilt or
7 innocence. But on the other hand, you have the right to
8 testify, that is you have the right to take the stand, raise
9 your right hand, just like all these other witnesses have, and
10 testify in this matter and tell your side of the story. It is
11 clear that Mr. Weber and Ms. Tynes have probably counseled you
12 not to do that, and you may or may not heed their counsel. In
13 other words, the decision whether to testify or not to testify
14 is not left to your lawyers, it is left to you. Do you
15 understand that, sir?

16 **DEFENDANT:** Yes, sir.

17 **THE COURT:** Is it your desire not to testify in this
18 case?

19 **DEFENDANT:** I do not choose to testify, Your Honor.

20 **THE COURT:** Very well. Thank you, you may be seated.

21 Let's talk about logistics, if we could, Mr. Weber. I
22 don't want to bring the jury in and out and in and out. When
23 the jury comes back, I presume that at that point you will
24 simply rest, would that be accurate?

25 **MR. WEBER:** Yes, Your Honor.

1 **THE COURT:** And at that point, also, since it's
2 getting close to 5:00, it would be my intention to let them go
3 home and come back tomorrow at which time we would take up the
4 matter of jury instructions and closing arguments. Would that
5 be acceptable to the defendant?

6 **MR. WEBER:** Yes, Your Honor.

7 **THE COURT:** Mr. Buckner, Ms. Rose, is that acceptable
8 to the government?

9 **MS. ROSE:** Yes, Your Honor.

10 **THE COURT:** Obviously I'm not going to ask the
11 government if you have any rebuttal witnesses because there's
12 nothing to rebut. So at that particular time, or when the
13 defendant finally rests, can we simply move on from that point
14 to excuse the jury for the evening?

15 **MS. ROSE:** Yes, sir.

16 **THE COURT:** Is that your position as well, Mr. Weber?

17 **MR. WEBER:** Yes, Your Honor.

18 **THE COURT:** Good. So let me walk myself through it.
19 We're going to bring the jury back, you're going to rest, we're
20 going to let the jury go home and let them come back to hear
21 closing arguments and instructions.

22 Now, I have got proposed instructions from both sides, and
23 I want to take those instructions up with you tomorrow morning
24 at 9:00, but I don't want the jury sitting around waiting for
25 us. So my proposal is to ask the jury to return, let's say, at

1 10:30, which will give us from 9:00 to 10:30 to approve the
2 instructions and to make -- and to record any objections that
3 there may be to the Court's instructions to the jury.

4 Now, I do intend to let you go home with at least a draft
5 of those instructions and you can look over them this evening;
6 when we come back tomorrow morning at 9:00, at which time we'll
7 conduct an informal charge conference with regard to the
8 instructions. Would that be acceptable to the government?

9 **MS. ROSE:** Yes, Your Honor.

10 **THE COURT:** Would that be acceptable, Mr. Weber, to
11 you?

12 **MR. WEBER:** Yes, Your Honor.

13 **THE COURT:** And you as well, Ms. Tynes, I don't mean
14 to leave you out of the equation?

15 **MS. TYNES:** Yes, Your Honor.

16 **THE COURT:** Sounds like we have a plan. Please bring
17 in the jury.

18 **(JURY IN AT 4:37 P.M.)**

19 **THE COURT:** What says the defendant?

20 **MR. WEBER:** The defense rests, Your Honor.

21 **THE COURT:** Very well. Ladies and gentlemen of the
22 jury, both sides have finally rested, that means that you have
23 heard all the evidence that you may properly consider in
24 returning your verdict in this case. I am going to allow you
25 to go ahead and go home a little bit early, not real early, but

1 a little bit early. And I am also going to ask that you return
2 tomorrow morning at 10:30, that gives you a little extra time
3 to get that second cup of coffee, if you will, at which time
4 we'll proceed with the case.

5 Now, as the case continues, the temptation to do research
6 on your own, maybe talk about the case, maybe look up some
7 terms, that temptation grows, and I ask you to resist it as
8 best you can. Please remember the instructions of the Court.
9 This case is not over. You see, even though you may have heard
10 all the facts already, you have not heard the Court's
11 instruction on the law, and that is the law that you must apply
12 to these facts.

13 So I am going to ask that you return tomorrow morning at
14 10:30 a.m. at which time we'll take up the instructions of the
15 Court on the law and we will take up the closing arguments by
16 the lawyers. Please remember my instructions regarding your
17 conduct outside of the courtroom. Don't talk with anyone about
18 the case, don't permit anyone to talk with you about the case.
19 In the event that the case that reported in the media, which I
20 think is unlikely, but if it is, please don't read about it,
21 don't listen to any radio or television newscast concerning it.
22 Do not make any independent investigations or any independent
23 research on your own. As I have told you before, you are to
24 try this case and to reach your verdict based on the evidence
25 that you hear in this courtroom alone. Don't use any

1 technological tools like the Internet or anything else in that
2 regard.

3 I will see you, then, tomorrow morning, the Court Security
4 Officer will show you where, at 10:30 a.m. and we'll continue
5 the case. Thank you and be careful going home.

6 (JURY OUT AT 4:40 P.M.)

7 **THE COURT:** All right. Just as I was telling them
8 not to use any technology, it occurs to me there's no reason
9 for you all to sit around and wait. Would it be all right if I
10 email you a draft of my proposed instructions? I don't want
11 you to have to sit around waiting for me to print it out.
12 Would that be all right with the government?

13 **MS. ROSE:** Yes, Your Honor.

14 **THE COURT:** Mr. Weber, Ms. Tynes, would that be all
15 right with you?

16 **MR. WEBER:** Ms. Tynes and I are used to paper, Judge,
17 but we can do email, that's fine.

18 **THE COURT:** Well, I am not going to run you off, now.
19 If you would like to hang around and wait for me to actually
20 print out a copy, I am okay with that too, I just thought I'd
21 make it easier on the parties. You tell me what you want to do
22 and I'll do it.

23 **MR. WEBER:** We can get it by email, Judge.

24 **THE COURT:** There you go.

25 **MR. WEBER:** We're just old, I guess.

1 **THE COURT:** I'm with you. I'm going to print it out
2 for myself. Well, then we'll reconvene tomorrow morning at
3 9:00 a.m. at which time we'll take up an informal charge
4 conference in chambers and we'll go over the instructions.
5 We'll also go over closing argument and the final procedures
6 that we'll undertake while during closing arguments. The
7 defendant in the meantime is remanded back to the custody of
8 the United States Marshals, and the government will retain
9 custody of these firearms. See you tomorrow morning at 9:00.

10 (TRIAL RECESSED)

11 - - -

CERTIFICATE OF COURT REPORTER

I, Sherri L. Penny, RPR, FCRR, Official Court Reporter for the United States District Court for the Southern District of Mississippi, appointed pursuant to the provisions of Title 28, United States Code, Section 753, do hereby certify that the foregoing is a correct transcript of the proceedings reported by me using the stenotype reporting method in conjunction with computer-aided transcription, and that same is a true and correct transcript to the best of my ability and understanding.

I further certify that the transcript fees and format comply with those prescribed by the Court and the Judicial Conference of the United States.

S/ Sherri L. Penny
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